IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 407 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : YES

ANIL NARAYAN

Versus

STATE OF GUJARAT

Appearance:

MR NIRAV C THAKKAR for Petitioners

Mr.M.A.BUKHARI, A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 12/10/2000

ORAL JUDGEMENT

1. This Criminal Revision Application has been converted from Special Criminal Application under orders of the competent Court, but I find that the relief clause has not been amended. Consequently, leave to amend relief

clause is granted. Relief clause be amended forthwith.

2. The two revisionists in Sessions Case No.28 of 1997 were wanted u/s.302, 331 and 114 I.P.Code. On 4.8.1997 they moved an application before the trial Judge that there is no evidence against them and as such they may be discharged. In brief the averments in their application where that they did not arrest the deceased nor they had gone to the house of the deceased at any point of time nor they were members of search party on the date of incident and that they were also not on duty in the guard room at the time mentioned in the F.I.R. They also denied their presence at the alleged place of occurrence. They further denied that they participated in the alleged beating of the deceased. With these averments they prayed that since there is no sufficient ground and material for proceeding against them they may be discharged.

3. The learned Additional Sessions Judge, through impugned order dated 29.1.1999, rejected this Application of the revisionists which is under challenge in this Revision.

4. Shri N.C.Thakkar, learned Counsel for the revisionists and Shri M.A.Bukhari, learned A.P.P. have been heard and the impugned order has been examined. After examining the impugned order it can safely be said that it is confused order as well as self contradictory order dictated by the learned trial Judge. It is also in contravention of the provisions of Section 227 Cr.P.C.

5. Section 227 Cr.P.C. provides that if upon consideration of the record of the case and the documents submitted therewith and after hearing the submission of the accused and the prosecution in this behalf the Judge considers that there is no sufficient ground for proceeding against the accused he shall discharge the accused and record his reasons for doing so.

6. From Section 227 Cr.P.C. it is clear that it is mandatory for the Sessions Judge to consider the entire record of the case, and the documents submitted by the prosecution. It is further obligatory on him to hear the submissions of the accused as well as of the prosecution and if upon consideration of the record, material brought on record and submissions of the accused and the prosecution, the Judge considers that there is no sufficient ground for proceeding against the accused he shall discharge him. The requirement is that if the Sessions Judge finds that there is no sufficient ground

for proceeding against the accused he can discharge him. There is no requirement that the Sessions Judge should find that there is no sufficient evidence for conviction of the accused. What is required is that there is no sufficient ground for proceeding against the accused. Proceeding against the accused is different from convicting the accused. The Sessions Judge in the impugned order has mentioned the aforesaid provision, but has given confused and self contradictory reasons.

7. It is a case u/s.302, 331 and 114 I.P.Code. From the F.I.R. as well as from the material collected by the Investigating Agency and the submissions of the revisionists before the trial Judge it appears that it was not a case of direct evidence against the revisionists. No direct evidence against the revisionists was ever collected by the Investigating Agency. If it is a case of circumstantial evidence then the circumstantial evidence leading to irresistible conclusion about the guilt of the accused has also not been collected by the Investigating Agency. From the application of the revisionists, which remained uncontroverted, it transpires that they have not arrested the deceased. They had not gone to the house of the deceased to arrest him. They were not even members of the Searching party. They were not present in the Guard Room nor they were on duty in the Guard Room or near or around of the Guard Room at the time of incident and the place of incident is also doubtful. The deceased was following the Jeep. He was on foot. It is stated that he fell down and sustained injuries. As such no injury was caused in the Guard room. There is no evidence against the revisionists that they were occupants of the jeep when the deceased was following the jeep. The only evidence against the revisionists is that they were directed by the Superior Officer to take the injured for medical examination. At that time probably the deceased was alive. When the deceased was taken to Dr.Jamuna, Dr.Jamuna pronounced him dead. Of course number of injuries were found on the person of the deceased when he was examined by Dr.Jamuna. Two witnesses M.N.Chaudhari and S.L.Shah also stated to the same effect. Thus, from the statements of Dr.Jamuna, M.N.Chaudhari and S.L.Shah the only evidence forthcoming against the revisionists is that they took the injured or the deceased to Dr.Jamuna. There is no evidence of last seen against the accused. There is no evidence that they were seen in the company of deceased at the time of occurrence as well as at the place of occurrence. Thus, merely because they took the injured or the deceased to Dr.Jamuna it cannot be said that the link in the chain of circumstantial evidence was

complete from which the two revisionists could be proceeded u/s. 302 of the I.P.Code.

8. In the impugned order the learned Sessions Judge has mentioned that the learned Advocate representing the prosecution and the defence submitted from the charge sheet and police papers that both the accused were not on duty when the incident occurred. He also admitted in the impugned order that they had only taken the injured to Dr.Jamuna on instruction from their superior Officer. Still in face of no evidence against the revisionists the Sessions Judge observed that when the judicial proceedings are going on then at this stage the evidence is not to be weighed in a manner to see whether the accused could ultimately be punished or acquitted. It is at this juncture that the learned Sessions Judge has committed grave error of law. If there was no evidence against the revisionists there was no occasion for weighing the evidence for finding out whether ultimate punishment could be recorded on such evidence. He again observed that he was required to see at that stage that the case against the accused is totally false. This is also not the requirement u/s.227 Cr.P.C. All that he was required to see was whether there was any material to proceed against the revisionists or not. That point was not at all touched by the learned Sessions Judge. He has observed at another place that in these circumstances looking to the evidence collected by the police it prima facie appears that there is strong and reasonable possibility of the accused being involved in the offence. This observation is totally against the material collected by the Investigating Agency. Another funny reasoning has been given by the learned Sessions Judge that because in the Post Mortem Report 23 injuries have been shown on the body of the deceased and also internal injuries were received by him, in these circumstances if at the specified time even the presence of both the accused was not at the Guard Room then also looking at the stage and circumstances of the case they seem to be prima facie involved in the case. It is really shocking and surprising how such findings can be given for which there was no material on record. Simply because in the Post Mortem Report 23 injuries were found it could not be connected that these injuries were necessarily inflicted by the revisionists. At another place in the impugned order the learned Sessions Judge has observed that according to the case papers the search party appears to be responsible for the incident. The revisionists were not members of search party. How could then the liability of the search party could be equated with the liability of the revisionists? Yet another funny

reasoning is to be found in the impugned order that because external injuries have been caused by blunt object like iron pipes or sticks it appears that suspicion arises that the accused seem to be primarily involved in the offence. By making such observation the learned Sessions Judge has given impression that he does not no A.B.C.D. of criminal jurispudance. His observation that in short charge against the accused does not seem to be baseless is again confusing, absurd and self contradictory. Likewise findings of the learned Sessions Judge that there appears to be enough material to proceed with the case against the revisionists is also contrary to the material collected by the Investigating Agency against the revisionists.

9. In the result I am of the view that since the prosecution failed to bring on record the material from which it can be gathered that there is sufficient ground for proceeding against the revisionists the learned Sessions Judge committed grave violence to the provisions of Section 227 Cr.P.C. in rejecting the application of the revisionists. The impugned order is therefore wholly illegal and is liable to be set aside. The revision, therefore, succeed and is hereby allowed. The impugned order is set aside. The revisionists Anil Narayan and Sheravat M.S. are hereby discharged u/s.302, 331 and 114 I.P.Code. They are on bail. They need not surrender. Their bail bonds are cancelled and sureties discharged.

Let a Copy of this order be sent to the concerned Sessions Judge for his information.

sd/-

Date : October 12, 2000 (D. C. Srivastava, J.)

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